

ORIGINAL

Before the
Federal Communications Commission
Washington, D.C. 20554

RECEIVED

JUN 22 2000

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Amendment of the Commission's Rules)

Regarding Installment Payment Financing for)

Personal Communications Services (PCS))

Licensees)

WT Docket No. 97-82

To: The Commission

COMMENTS OF OPM AUCTION CO.

David D. Lasier
CEO and Chairman
6120 Windward Parkway
Suite 200
Alpharetta, GA 30005
(678) 366-9660

June 22, 2000

No. of Copies rec'd 214
List A B C D E

SUMMARY

While OPM supports several of the Commission's tentative conclusions, it believes that the cumulative effect of opening the auction to non-DEs, dividing C Block into 10 MHz blocks of spectrum and removing the 10 percent license cap will be to deny DEs the opportunity to meaningfully participate in the provision of spectrum based services. As Section 309(j) of the Communications Act requires the FCC to afford small businesses meaningful participation, these proposals violate that statutory requirement.

By allowing non-DEs to participate and removing the 10 percent cap the Commission will simultaneously open the auction to large carriers with 'deep pockets' and remove a key constraint on the number of licenses they can obtain in the auction. Sub-dividing C Block into 10 MHz blocks will disproportionately disadvantage DEs because DEs will be forced to attempt to aggregate multiple licenses within a given market at the very time that better funded carriers are being allowed to bid.

OPM supports several of the Commission's tentative conclusions: 1) retaining the current license grouping for bidding purposes; 2) maintaining the 45 MHz spectrum cap; 3) continuing its present bidding policy; 4) loosening the C and F block transfer restrictions; and 5) increasing bidding credits. While each of these proposals is laudable, they cannot counteract the adverse effects of the Commission's other proposed changes.

The statutory mandate of Section 309(j) to provide meaningful small business participation cannot be met while simultaneously permitting well funded non-DEs to bid against DEs for 'mini-blocks' of spectrum. OPM urges the Commission not to implement these proposals.

TABLE OF CONTENTS

SUMMARY	i
DISCUSSION	1
I. THE COMMISSION MUST BE GUIDED BY SECTION 309(j)(4)'S MANDATE TO PROVIDE SMALL BUSINESSES MEANINGFUL PARTICIPATION	3
II. RECONFIGURING 30 MHz LICENSES INTO THREE 10 MHz LICENSES IS ANTITHETICAL TO PROVIDING MEANINGFUL PARTICIPATION	6
III. THE COMMISSION CORRECTLY CONCLUDED THAT BULK BIDDING IS INAPPROPRIATE	9
IV. THE COMMISSION SHOULD REMOVE THE GRANDFATHER EXCEPTION ...	10
V. BIDDING CREDITS SHOULD BE INCREASED TO 25 PERCENT AND 40 PERCENT, RESPECTIVELY	11
VI. MODIFYING THE TRANSFER RESTRICTIONS WILL FURTHER ENCOURAGE LICENSEES TO BUILD OUT THEIR SYSTEMS RAPIDLY	12
VII. CAPPING THE AMOUNT OF SPECTRUM WHICH MAY BE WON AT AUCTION IS ESSENTIAL TO SATISFYING THE COMMISSION'S MANDATE UNDER SECTION 309(j)	14
VIII. THE 45 MHz CAP ON CMRS SPECTRUM PROMOTES COMPETITION AND SHOULD BE RETAINED	15
CONCLUSION	16

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Amendment of the Commission's Rules)	WT Docket No. 97-82
Regarding Installment Payment Financing for)	
Personal Communications Services (PCS))	
Licensees)	
)	
)	
)	
)	
)	

To: The Commission

COMMENTS OF OPM AUCTION CO.

OPM Auction Co. ("OPM") hereby submits these comments in response to the Commission's *Further Notice of Proposed Rulemaking*, WT Docket No. 97-82, FCC 00-197 (rel. June 7, 2000) ("*FNPRM*"). OPM was a successful participant in the Commission's most recent March 1999 C and F block reauction, and is currently in the process of establishing wireless networks in West Virginia, Illinois, and the U.S. Virgin Islands using six C block licenses it received following that auction. As a qualified designated entity ("DE") pursuant to Section 24.709 of the Commission's rules, OPM plans to participate in the upcoming C and F block reauction, which has recently been rescheduled for November 29, 2000.

While OPM supports several of the Commission's tentative conclusions, it has serious concerns that the cumulative effect of these proposals will be to eradicate any chance DEs could have to meaningfully participate in the auction. Specifically:

- If implemented, these proposals would violate the mandate contained in Section 309(j)(4) to provide small businesses with the opportunity to participate meaningfully in the provision of spectrum-based services.
- Such wholesale changes to the rules are also fundamentally unfair. They would irreparably harm DEs who have successfully participated in past auctions, are now constructing and/or operating PCS systems, and whose business plans were predicated on the certainty that the spectrum reserve for DEs was a bedrock principle that would not be totally re-tooled.
- The proposal to fractionalize 30 MHz blocks of spectrum into three blocks of 10 MHz will drive up the costs of spectrum acquisition, and will result in increased difficulty for small businesses in acquiring the critical mass of spectrum required to operate in a commercially-viable manner. OPM believes that 20 MHz is the minimum amount of spectrum a DE must have in order to compete with established carriers and prepare itself for 3G services. Thus, if any downward adjustment is to be made to DE spectrum, DEs must be afforded the opportunity to bid on a minimum of 20 MHz. In addition, OPM opposes the notion that either 15 MHz C block spectrum or any F block spectrum should be taken away from DEs.

While OPM opposes key elements of the proposed changes, it supports the Commission's proposals to retain the current license grouping for bidding purposes, increase bidding credits, loosen

the C and F block transfer restrictions, and maintain the 45 MHz spectrum cap. OPM also supports elimination of grandfathering provisions and opposes elimination of the 10 percent cap on the number of C and F block licenses which may be won at auction.

I. THE COMMISSION MUST BE GUIDED BY SECTION 309(j)(4)'S MANDATE TO PROVIDE SMALL BUSINESSES MEANINGFUL PARTICIPATION

The existing DE eligibility rules form the cornerstone of the Commission's statutory obligation to "ensure that small businesses . . . are given the opportunity to participate in the provision of spectrum-based services."¹ Congress' main concern was that without specific protections for DEs, competitive bidding procedures would raise the cost of entry to provide spectrum-based services to levels favoring only those with "deep-pockets," at the expense of new companies or start-ups.² The Commission construed these Congressional directives as "a mandate that we take steps that are necessary to ensure that designated entities have a realistic opportunity to obtain broadband PCS licenses."³ One of those steps was the reservation of C and F block licenses for small business applicants,⁴ which Congress described as "a justifiable social policy goal."⁵ The FCC also adopted bidding credits and a cap on the number of licenses a given entity could win at auction. Through this combination of protections, the Commission was able to offer

¹47 U.S.C. 309(j)(4)(D).

²See H.R. Rep. No. 103-111, at 255 (1993) ("House Report"); see also *Implementation of Section 309(j) of the Communications Act -- Competitive Bidding*, PP Docket No. 930253, *Fifth Report and Order*, 9 F.C.C.R. 5532, 5537 (1994) ("*Competitive Bidding Fifth Report and Order*").

³*Id.*

⁴See 47 C.F.R. § 24.709(a) (reserving licenses on the C and F blocks for bidding by entities with annual gross revenues of less than \$125 million and total assets of less than \$500 million).

⁵See House Report at 255.

DEs a meaningful opportunity to participate in the provision of spectrum-based services. If eligibility requirements are eroded or removed, entrenched large carriers with far deeper pockets than DEs could pour into the auction and inflate prices beyond the reach of most DEs.⁶

While the *FNPRM* acknowledges the importance of 309(j)(4),⁷ the Commission suggests that the rules have “evolved,”⁸ contends that it has an obligation “to balance a number of spectrum policy considerations,”⁹ and tentatively concludes the “demand for spectrum to satisfy congestion, new technology and competitive needs”¹⁰ require drastically revising spectrum allocation.

OPM agrees that PCS rules, like all other rules, have evolved. However, there is a marked difference between the gradual refinement of rules and the dismantling of the basic allocation of spectrum. Removing DE eligibility restrictions would diminish meaningful participation of small businesses in the auction process. More fundamentally, in light of the language of Section 309(j)(4) and its legislative history, OPM disagrees with the notion that meaningful participation of small businesses is a matter the Commission is free to purposely diminish without violating both the Act and the policy it is intended to implement.¹¹

⁶*Id.*; see also *Competitive Bidding Fifth Report and Order*, 9 F.C.C.R. at 5537.

⁷*FNPRM* at 6.

⁸*Id.* at 7.

⁹*Id.* at 15.

¹⁰*Id.* at 17.

¹¹Although some have pointed to the results of other spectrum auctions and argued that bidding credits alone can ensure meaningful participation for DEs, such logic is flawed. Bidding credits alone may be sufficient to preserve opportunities for DEs in other circumstances, particularly where there are large numbers of smaller licenses (as small as 5 MHz), which require smaller capital outlays being made available at auction; in the instant case, bidding credits would be insufficient.

On the other hand, maintaining the existing eligibility requirements for the available C and F block spectrum is consistent with Section 309(j)'s mandate and also serves the public interest goals established by the Commission when it recently reexamined its rules.¹² These goals include: (1) maintaining the integrity of the Commission's rules and auction process; (2) ensuring fairness to auction participants and licensees in competing services; (3) complying with Section 309(j)'s mandate to disseminate licenses among many applicants, including small businesses; and (4) promoting competition in the marketplace.

First, the integrity of the auction process is called into question whenever the Commission changes its reasoning and its rules without a far-reaching and well-documented change in circumstances. In this case, there has been no change in circumstances to justify such a radical departure from the existing rules. Since the FCC took the remedial step of eliminating installment payments, the auctioning of DE spectrum, as evidenced by last year's reauction, has been successful and unmarred by missed payments or bankruptcy.

Second, any major change at this stage would be fundamentally unfair to past DE auction participants who bid in prior auctions and formulated business plans with the expectation that rules would be followed which would provide DEs with the opportunity to complete their service areas

It appears that the Commission recognized this fact when it first adopted its C and F block rules, which provided for limited eligibility as well as bidding credits, finding one without the other to be insufficient to meet the statutory objective of Section 309(j). *See Competitive Bidding Fifth Report and Order*, 9 F.C.C.R. at 5538; *see also Amendment of the Commission's Rules Regarding the 37.0-38.6 and 38.6-40.0 GHz Bands*, ET Docket No. 95-183, PP Docket No. 93-253, *Notice of Proposed Rulemaking and Order*, 11 F.C.C.R. 4930, 4975 (1995).

¹²*See Amendment of the Commission's Rules Regarding Installment Payment Financing for PCS Licensees*, WT Docket No. 97-82, *Order on Reconsideration of the Second Report and Order*, 13 F.C.C.R. 8345, 8374 (1998) ("C Block Reconsideration Order").

by acquiring additional DE licenses in the upcoming auction. Further, eliminating the eligibility rules produces an inequitable result as it drastically reduces the chances that DEs could win the C and F block licenses at auction.

Third, removing the DE restriction is contrary to Section 309(j) because bidding credits alone are insufficient to ensure the successful participation of DEs. Open bidding, combined with the increased costs of aggregating spectrum, will overwhelm any benefits afforded by increasing bidding credits.

Finally, open bidding would lessen competition as large, well-financed applicants, rather than new DE entrants, obtained the remaining licenses. Thus, in contrast to the Commission's third and forth goals, licenses could be disseminated to a few large carriers and competition would be thereby diminished. Based on the Commission's mandate under Section 309(j), as well as public interest considerations, the Commission must maintain the existing eligibility restrictions.

II. RECONFIGURING 30 MHz LICENSES INTO THREE 10 MHz LICENSES IS ANTITHETICAL TO PROVIDING MEANINGFUL PARTICIPATION

OPM strongly opposes the Commission's proposal to reconfigure each available 30 MHz C block license into three 10 MHz licenses. Due to technical and economic considerations, 10 MHz is insufficient for any PCS carrier that wishes to be competitive in the marketplace.¹³ We note that the Commission has previously determined that 30 MHz of spectrum is necessary to allow DEs to compete effectively in the provision of services.¹⁴ The record is also replete with comments that

¹³See Declaration of Simon Cavenett, attached hereto as Attachment 1.

¹⁴See *Amendment of the Commission's Rules to Establish New Personal Communications Services, Memorandum Opinion and Order*, GEN Docket No. 90-314, 9 F.C.C.R. 4957, 4961 (1994) (explaining the reasons for changing a 20 MHz block to a 30 MHz block and eliminating one 10

avored maintaining the 30 MHz blocks.¹⁵ We note that the few entities who favor subdividing C block spectrum into 10 MHz licenses are primarily large, established carriers who claim they are exhausting their present capacity and are unable to deploy new services.¹⁶

Historically, the Commission sought to promote the dissemination of licenses among a wide variety of applicants, including small businesses by establishing a significant spectrum reserve for small businesses. Of the 120 MHz of PCS spectrum which has been auctioned, 40 MHz was reserved for DEs, thereby ensuring that a significant number of licenses and a significant segment of spectrum would be disseminated among small businesses.

OPM believes that 10 MHz “mini-blocks” will have the opposite effect that the Commission anticipates. Whereas the Commission envisions a market for these mini-blocks, OPM believes that small businesses would be uninterested as 10 MHz is unsuitable to provide voice and data services. Instead, to compete with incumbent wireless operators, small businesses would be forced to attempt to win two or more blocks of 10 MHz within a market in order to acquire the necessary spectrum. Acquisition of a 30 MHz block would become more difficult and more expensive because carriers seeking 30 MHz of spectrum would be forced to aggregate licenses and endure higher transaction fees.

MHz block from the PCS band plan); *see Competitive Bidding Fifth Report and Order*, 9 F.C.C.R. at 5587-88.

¹⁵*See FNPRM* at 12 & nn. 53 & 54.

¹⁶*See Id.* at 11 & n.50. The capacity needs of these carriers, many of whom are already licensees of 30 MHz blocks of spectrum, could certainly be satisfied with an additional 10 MHz of spectrum, which would bring their total to 40 MHz.

If the Commission introduces any new costs to acquire spectrum, it disproportionately disadvantages the small business bidder who has smaller ‘pockets’ than the large, established carrier. The proposed changes will clearly result in new spectrum acquisition costs because aggregating 30 MHz blocks of spectrum will become more difficult and open bidding will drive up the costs as larger, better-financed carriers are able to pay more for licenses. Thus, subdividing the spectrum into ‘mini-blocks’ will decrease the ability for DEs to meaningfully participate and is inconsistent with Section 309(j)(4). In addition, coupling the subdivision of spectrum with opening bidding to large carriers can only result in decreased spectrum being awarded to DEs and, thus, this proposal is antithetical to Section 309(j)(4).

This proposal also suffers from unfairness. DEs designed their business plans and participated in past auctions with the expectation that they would have the opportunity to complete their service areas by acquiring additional 30 MHz spectrum blocks. As any prudent investor would, OPM scrutinized the FCC’s rules and developed a business plan, based in large part on the bedrock principle of a DE reserve consisting of 30 MHz blocks of spectrum. This proposal would nip fledgling DE competitors in the bud by making wholesale changes to its rules within five years of the original C block auction and within two years of the C block reauction. The unfairness is four-fold: 1) a basic rule is being radically changed; 2) the resulting auction rules would greatly disadvantage DEs, who have not been afforded the chance to build and expand their networks; 3) the DEs who would be most disadvantaged are those who ‘played by the rules’ in the original C block auction and relied on proven sources of capital; and 4) the proposal would strip spectrum away from DEs even though non-DEs already have access to double that amount of PCS spectrum.

The public interest clearly is not served if changes to the auction process produce results that are fundamentally unfair,¹⁷ as would be the case here. If there is to be any re-sizing of the 30 MHz blocks, OPM feels strongly that the requisite 20 MHz must remain undivided and available to DEs. Each available 30 MHz block could be subdivided into two licenses, one 20 MHz and one 10 MHz. The 10 MHz license would be open to general bidding in markets with a population of 2.5 million. The remaining 20 MHz license in the larger markets, as well as all available spectrum in smaller markets, would remain set-aside for DEs. Such a narrowly-tailored solution would accommodate the most pressing needs of licensees in congested markets, while preserving the ability of DEs to participate in the provision of PCS service.

III. THE COMMISSION CORRECTLY CONCLUDED THAT BULK BIDDING IS INAPPROPRIATE

OPM fully supports the FCC's tentative conclusion to take bids separately on each license in Auction No. 35 on a simultaneous multiple round basis, as has occurred in every previous PCS auction. Bulk bid proposals such as Nextel's would economically preclude many small business bidders from participating in the upcoming auction. In the comments filed previously there was near unanimity that bulk bidding would significantly decrease participation by both small businesses and large carriers.¹⁸ As noted by the FCC, small businesses would be hard pressed to obtain the financing necessary to win, pay for, and construct the larger systems included in a bulk bid design.¹⁹ Thus, the Commission's proposal to maintain the *status quo* and accept bids separately for each

¹⁷*C Block Second Report and Order*, 12 F.C.C.R. at 16437-38.

¹⁸*FNPRM* at 19.

¹⁹*Id.*

license provides for the maximum flexibility for auction participants while not precluding companies such as Nextel who seek to aggregate licenses on a large scale.

IV. THE COMMISSION SHOULD REMOVE THE GRANDFATHER EXCEPTION

OPM supports the Commission's initiative to re-examine the 'grandfather exception,' and urges the Commission to require DEs to re-qualify as DEs prior to this auction. When it adopted rules governing the reauction of returned DE spectrum, the Commission modified the strict eligibility requirements that had previously governed participation in the DE auction. Specifically, the Commission allowed entities that had been eligible for and had participated in the original C block auction to bid in the reauction, regardless of whether they actually satisfied the eligibility requirements at the time of the reauction.²⁰

The 309(j)(4) mandate to encourage participation by small businesses is a laudable goal. As long as a DE remains qualified it should be entitled to utilize reserved spectrum and bidding credits that were designed to encourage small businesses. However, the moment a DE becomes successful enough to outgrow its DE designation, that is the time that it should be foreclosed from the benefits meant to be enjoyed by DEs during the auction. There is little policy justification for extending eligibility to an entity in November 2000's reauction simply because that entity qualified as a DE over four years ago. As noted by Verizon Wireless in its Petition for Reconsideration, such a rule would "unjustifiably confer a windfall on large businesses, to the detriment of the DEs that the rule was intended to benefit."²¹ In fact, by opening these otherwise closed auctions to parties who do not

²⁰47 C.F.R. 24.709(b)(9)(i); see *C Block Second Report and Order*, 12 F.C.C.R. at p. 22.

²¹See Verizon Petition at 2.

meet the DE eligibility criteria, the Commission directly undermines its statutorily-mandated goal of “ensur[ing] that small businesses . . . are given the opportunity to participate in the provision of spectrum-based services.”²²

V. BIDDING CREDITS SHOULD BE INCREASED TO 25 PERCENT AND 40 PERCENT, RESPECTIVELY

In past auctions, the Commission has offered bidding credits to small and very small businesses in order to level the playing field and allow them to compete against larger entities. For example, in previous C and F block auctions, which were open only to DEs, small businesses received bidding credits worth 15 percent, while very small businesses received bidding credits worth 25 percent. These credits have enabled small and very small businesses to participate meaningfully in spectrum auctions, thereby serving the public interest and furthering the Commission’s mandate under Section 309(j).

In the *FNPRM*, however, the Commission proposes to remove eligibility restrictions and allow larger entities to bid against DEs on the spectrum to be reaucted. As the Commission recognizes, evidence in the record demonstrates that major, well-capitalized wireless companies are keenly interested in acquiring this spectrum.²³ DEs, which by definition and experience encounter problems in obtaining capital, would be unable to compete against these larger companies in bidding on the spectrum which, to date, has been reserved for DEs.

While OPM reiterates its opposition to eliminating or eroding the eligibility restrictions (*see* Section I, *infra*), if the Commission chooses to move forward with this proposal, additional measures

²²47 U.S.C. § 309(j)(4)(D).

²³*FNPRM* at 41.

must be taken to ameliorate the effect of allowing large carriers to participate in the auction. OPM concurs with the idea proffered by the Commission that the bidding credits be increased to 25 percent and 40 percent, respectively.²⁴ OPM believes that new entities that satisfy the criteria and currently qualify as DEs (*see* Section IV, *infra*) should receive a 25 percent bidding credit, whereas entities that have qualified as DEs in a previous auction and who requalify as DEs in this auction should receive a 40 percent bidding credit.²⁵ By increasing the amounts of the bidding credits, the Commission can offer DEs a meaningful opportunity to participate in the provision of PCS service, thereby continuing to serve the public interest and furthering the directive of Section 309(j). In addition, by fine tuning the way in which the bidding credits are awarded, the Commission can recognize the travails of those DEs that have successfully participated in, and helped to shape, the auction process, even as it was fundamentally altered.

VI. MODIFYING THE TRANSFER RESTRICTIONS WILL FURTHER ENCOURAGE LICENSEES TO BUILD OUT THEIR SYSTEMS RAPIDLY

The Commission's current rules contain restrictions that prohibit C and F block licensees from transferring their licenses to entities that do not meet the DE eligibility requirements for five years from the date of their initial license grant. The Commission set the holding period at five years to ensure that C and F block licensees would hold and construct the license until the first

²⁴*Id* at 22.

²⁵OPM believes that bidding credits should apply regardless of whether the bidding is 'open' or 'closed' because an unintended effect of permitting open bidding on formerly closed spectrum will be that many DE bidders will be 'herded' into competition for a reduced amount of DE spectrum.

construction benchmark, which occurs five years after the date of initial license grant.²⁶ This rule was designed to prevent trafficking in C and F block licenses, which were awarded through closed auctions.

The Commission now tentatively concludes that it will eliminate the transfer restriction for C and F block licenses awarded pursuant to open bidding in any future auctions. Insofar as the Commission decides to open bidding on C and F block spectrum, OPM supports the elimination of transfer restrictions on spectrum awarded pursuant to those auctions. There is little justification for restricting the transfer of licenses to DEs if non-DEs were eligible to bid on the spectrum at auction. The Commission has recognized this fact and declined to impose transfer restrictions in other similar auctions contexts.

The Commission also tentatively concludes that it will revise its rules to permit DE licensees to transfer licenses awarded pursuant to past and future closed auctions after completion of the first construction benchmark. OPM fully supports this proposed revision, as it will serve the public interest by incenting successful closed bidders to rapidly buildout their C and F block systems. Further, to the extent that there is any validity to the concern over trafficking, this proposal would prevent it by requiring that licensees build and operate a PCS system before they could sell it.

²⁶By five years, a licensee must cover one third of the market. *See* 47 C.F.R. § 24.203; *see also* 47 C.F.R. § 1.2111.

VII. CAPPING THE AMOUNT OF SPECTRUM WHICH MAY BE WON AT AUCTION IS ESSENTIAL TO SATISFYING THE COMMISSION'S MANDATE UNDER SECTION 309(j)

Section 309(j) of the Communications Act directs the Commission to “disseminat[e] licenses among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women.”²⁷ The Commission has interpreted this directive to mean that the “benefits that Congress intended for designated entities [should not] be enjoyed, in disproportionate measure, by only a few individuals or entities.”²⁸ In order to carry out Congress’ mandate that licenses be widely disseminated, the Commission imposed a ten percent cap on the number of C and F block licenses that a given entity could acquire at auction.²⁹ The Commission now proposes to eliminate that cap and allow bidders to acquire a limitless number of licenses in the upcoming auction.

OPM strongly opposes the proposed elimination of the cap, and urges the Commission to return to the mandate of Section 309(j), as well as past Commission policy, and assure that DE licenses are widely disseminated by the auction. While it is true that the Commission anticipated holding only one C block and one F block auction at the time that it enacted the ten percent limit, the rationale behind the limit is more compelling than ever. A “few bidders [may] win a very large number of the licenses” in the C and F blocks, which was exactly the problem that the license cap was designed to protect against.³⁰ This possibility becomes ever more probable as spectrum

²⁷See 47 U.S.C. § 309(j)(3)(B).

²⁸*Competitive Bidding Fifth Report and Order*, 9 F.C.C.R. at 5606.

²⁹*Id.*; see 47 C.F.R. § 24.710.

³⁰*Competitive Bidding Fifth Report and Order*, 9 F.C.C.R. at 5606.

previously allocated for DEs is made available to well-funded large carriers. While OPM has grave concerns about the affect eliminating eligibility restrictions will have on DEs, maintaining the license cap would provide at least some measure of protection against large, deep-pocketed companies gobbling up licenses.

VIII. THE 45 MHz CAP ON CMRS SPECTRUM PROMOTES COMPETITION AND SHOULD BE RETAINED

The Commission recently conducted an exhaustive review of spectrum allocation and market conditions and concluded that the CMRS spectrum cap continues to be a necessary and efficient means to protect the public interest. Specifically, the Commission found that the spectrum cap serves the public interest by promoting competition, preventing excessive concentration of licenses, providing incentives for licensees to make more efficient use of their spectrum, encouraging innovation, and promoting dissemination of licenses among a wide variety of applicants.³¹

Three parties have now filed petitions asking that the Commission waive, or forbear from applying, the spectrum cap with regard to any spectrum awarded in the upcoming C and F block auction.³² The Commission properly notes that these petitions contain no new material information to justify waiver or forbearance from the existing spectrum cap; thus, the Commission tentatively concludes that it will apply the cap to C and F block PCS spectrum awarded in the upcoming auction. OPM agrees that the spectrum cap furthers important statutory and public interest goals, and fully supports the Commission's tentative conclusion to retain the cap.

³¹*FNPRM* at 25; see *1998 Biennial Regulatory Review – Spectrum Aggregation Limits for Wireless Telecommunications Carriers*, WT Docket No. 98-205, *Report and Order*, FCC 99-244, at ¶¶ 1-2, 5-6, 20-65, 77-85 (Sept. 22, 1999).

³²*FNPRM* at 25.

CONCLUSION

The Commission is assigned the delicate task of drafting spectrum management rules which balance multiple, often competing, policy considerations while respecting Congressional directives. As circumstances change and services evolve, the Commission must continually reevaluate its policy responsibilities under the Communications Act and the public interest, and revise its rules as necessary.

By eliminating installment payments the Commission prudently responded to an unforeseen result-the inability for some DEs to meet payments. After the FCC fashioned and implemented remedial measures such as the elimination of installment payments, OPM is unaware of a single default arising from the C Block reauction. Thus, there simply is no calamitous event upon which to base a wholesale revision of the DE rules. Rather than alter the *status quo*, the FCC should continue to encourage meaningful small business participation by maintaining the eligibility requirements and spectrum block size. Opening eligibility and reconfiguring C block spectrum will drive up costs and foreclose meaningful participation by DEs, which is directly contrary to the public interest and the Commission's statutory mandate.

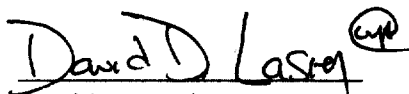
OPM concurs with the Commission that it should retain its non-bulk bidding policy and the 45 MHz spectrum cap; increase bidding credits to 25 and 40 percent; and allow C and F block license transfer after completion of the first construction benchmark. OPM also supports the elimination of the grandfather exception and opposes elimination of the 10 percent cap on the number of C and F block licenses which may be won at auction.

OPM believes that DEs will not be able to meaningfully participate in the upcoming auctions if the proposed changes are adopted. This would violate both the mandate of Section 309(j) and

unjustly penalize DEs that did not overbid, did not default, and did not declare bankruptcy. For the foregoing reasons, OPM requests the Commission retain the eligibility rules and the current spectrum allocation.

Respectfully submitted,

OPM AUCTION CO.

By: 
David D. Lasier
CEO and Chairman
6120 Windward Parkway
Suite 200
Alpharetta, GA 30005
(678) 366-9660

June 22, 2000

DECLARATION OF SIMON CAVENETT

I, Simon Cavenett, am Chief Technology Officer of Blue Sky Communications (“Blue Sky”), a US-based PCS communications company. I am responsible for overseeing the technical design, engineering and construction of wireless networks. I have thirteen years of comprehensive experience in wireless system planning, project management, design, deployment, optimization, and operation, and I implemented the first major fixed wireless system in Australia (Telstra) and one of the first commercial CDMA systems in China (Nortel). I hold a B.E. in Electrical Engineering, am a Graduate Member of the Institution of Engineers - Australia (IEAust), and a member of the Institution of Electrical and Electronics Engineers (IEEE) and the CTO Advisory Committee for the GSM Association of North America.

On an international and domestic level, carriers and countries are busily planning the introduction of Third Generation (“3G”) services within the next five years. To remain competitive, it is expected that carriers will seek to implement comparative services and features in their licensed markets. If Designated Entities (“DEs”) are to compete in the marketplace, it is essential that they have the same technological capability to provide these leading-edge services. Technical equality between DEs and Non-Designated Entities cannot be maintained if DEs are relegated to 10 MHz blocks. The minimum license required is 20 MHz (10+10 MHz FDD paired block). Without at least 20 MHz of spectrum, DE carriers will not be able to economically implement or provide the upcoming 3G technologies.

This minimum spectrum allocation of 20 MHz is fundamentally based in the air-interface specifications of the evolving 3G technologies. For example, the specification under development by 3GPP dictates a FDD band plan with 5 MHz carrier spacing and 3.84 MCPS. The specification under development by 3GPP2 dictates a FDD band plan with 3.75 MCPS for Spreading Rate 3 and aligned to the existing J-STD-008 PCS band plan. PCS licensees with 30 MHz in general do not face the same issues with respect to frequency planning issues for 3G systems and hence currently would have a definite competitive advantage with the ability to rollout and introduce 3G features and services.

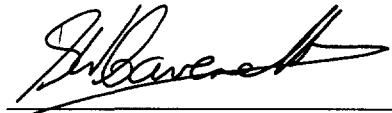
For relative equality between license holders in any market, it is clear that the minimum awarded license block must provide sufficient spectrum to:

- a) Allow the licensee to provide competitive and marketable services and features at the same relative complexity and cost as all other licensees.
- b) Not place any technology restrictions on a licensee due to the mandated frequency block awarded that do not equally apply to all other licensees’ frequency blocks for that market.

For these reasons, it is clear that a 10MHz frequency block (5+5 MHz FDD) in the FCC Broadband PCS Band is not sufficient to meet these criteria. The minimum required is a 20 MHz frequency block (10+10 MHz FDD).

I hereby declare, under penalty of perjury, that, to the best of my knowledge and belief, the statements contained in the attached letter are true and correct.

Executed on June 22nd, 2000

A handwritten signature in black ink, appearing to read "Simon Cavenett", written over a horizontal line.

Simon Cavenett
Chief Technology Officer
Blue Sky Communications
6120 Windward Parkway
Suite 200
Alpharetta, GA 30005

CERTIFICATE OF SERVICE

I, Jason Constantine, hereby certify that on this 22nd day of June 2000, a copy of the foregoing "Comments of OPM Auction Co." was served via Hand Delivery, on the following:

*James D. Schlichting
Wireless Telecommunications Bureau
Federal Communications Commission
445 - 12th Street, S.W., Room 3-C254
Washington, D.C. 20554

*Thomas Sugrue
Wireless Telecommunications Bureau
Federal Communications Commission
445 - 12th Street, S.W., Room 3-C252
Washington, D.C. 20554

*Kathleen O'Brien Ham
Wireless Telecommunications Bureau
Federal Communications Commission
445 - 12th Street, S.W., Room 3-C255
Washington, D.C. 20554

*Clint E. Odom
Cable Services Bureau
Federal Communications Commission
445 - 12th Street, S.W., Room 3-C458
Washington, D.C. 20554

*Amy Zoslov
Wireless Telecommunications Bureau
Federal Communications Commission
445 - 12th Street, S.W., Room 4-A760
Washington, D.C. 20554

Adam Krinsky
Office of Commissioner Tristani
Federal Communications Commission
445 - 12th Street, S.W., Room 8-C302
Washington, D.C. 20554

*Mark D. Schneider
Office of Commissioner Ness
Federal Communications Commission
445 - 12th Street, S.W., Room 8-B115
Washington, D.C. 20554

*Peter Tenhula
Office of Commissioner Powell
Federal Communications Commission
445 - 12th Street, S.W., Room 8-A204
Washington, D.C. 20554

*Bryan Tramont
Office of Commissioner Furchtgott-Roth
Federal Communications Commission
445 - 12th Street, S.W., Room 8-A302
Washington, D.C. 20554

*Ari Fitzgerald
Office of Chairman Kennard
Federal Communications Commission
445 - 12th Street, S.W., Room 8-B201
Washington, D.C. 20554

*Audrey Bashkin
Wireless Telecommunications Bureau
Federal Communications Commission
445 - 12th Street, S.W., Room 4-A664
Washington, D.C. 20554

Magalie Roman Salas
Office of the Secretary
Federal Communications Commission
445 12th Street, S.W.
Room TW-A325
Washington, D.C. 20554

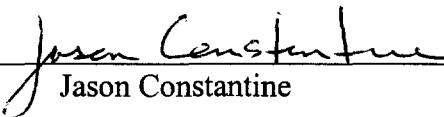
Commissioner William Powell
Federal Communications Commission
445 12th Street, S.W., Room 8-A204
Washington, DC 20554

Commissioner Ness
Federal Communications Commission
445 12th Street, S.W., Room 8-B115
Washington, DC 20554

Chairman William E. Kennard
Federal Communications Commission
445 12th Street, S.W., Room 8-B201
Washington, DC 20554

Commissioner Furchtgott-Roth
Federal Communications Commission
445 12th Street, S.W., Room 8-A302
Washington, DC 20554

Commissioner Gloria Trisani
Federal Communications Commission
445 12th Street, S.W., Room 8-C302
Washington, DC 20554


Jason Constantine